

Had it before that date been authorized under existing laws by a vote of the people of that town? The record shows that a vote of the people had before that time been taken; but it does not show that it was authorized by existing laws. There was no authority for submitting that question to the people; and its absence in the fifth section of the act incorporating the Paris and Decatur Company is a strong argument that municipalities were not intended to be included under the general designation of corporations.

We have held that a town cannot subscribe for stock in a railroad corporation unless it has the authority of the legislature for the act. The legislature usually requires the approval of the electors of the town, at an election for that purpose, as a condition to such subscription. Doubtless the legislature can impose or omit conditions, in its discretion. But when the sanction of a popular vote is required, it must be obtained. We are, therefore, compelled to hold that the subscription of the town of East Oakland had not been authorized under existing laws by a vote of the people prior to July 2, 1870.

We have held that there can be no *bona fide* holding where the statute did not in law authorize the issue of the bonds. The objection in such case goes to the point of power. There is an entire want of jurisdiction over the subject. It is not the case of an informality, an irregularity, fraud, or excess of authority in an authorized agent. Where there is a total want of authority to issue the bonds, there can be no such thing as a *bona fide* holding.

Judgment reversed

UNITED STATES v. YOUNG.

1. The Court of Claims, by granting a new trial after rendering judgment, and while an appeal therefrom is pending here, vacates the judgment, and resumes control of the case and the parties.
2. In such a case, a writ of *certiorari* will not be granted to compel that court to send here the proceedings subsequent to the appeal; but the appeal will be dismissed.
3. After judgment shall have been finally rendered by the Court of Claims, the proceedings in which the new trial was obtained may be brought here by appeal for review.

ON motion of the United States to dismiss an appeal from the Court of Claims, and of the appellee for a writ of *certiorari*.

Mr. Assistant Attorney-General Smith for the United States.

Mr. W. W. McFarland for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

During the pendency of this suit in this court the Court of Claims, assuming to act under the authority of sect. 1088, Rev. Stat., has granted a new trial, and the United States now ask to dismiss their appeal. This we have often decided they have the right to do. *Latham's and Deming's Appeals*, 9 Wall. 145. In *United States v. Ayres*, 9 id. 610, the motion to dismiss was made by the appellee and resisted by the United States; but it was held "that the order granting the new trial has the effect of vacating the former judgment, and to render it null and void;" and the appeal was consequently dismissed. The same principle was recognized in *United States v. Crussell*, 12 id. 175, *Ex parte Russell*, 13 id. 664, and *Ex parte United States*, 16 id. 699.

The appellee asks, however, that the cause may be retained, and that the proceedings under which the new trial was granted may be brought here by writ of *certiorari* for re-examination. Unless this can be done, he admits that the United States should be permitted to dismiss their appeal.

We have only such appellate jurisdiction as has been conferred by Congress, and in the exercise of such as has been conferred we can proceed only in the manner which the law prescribes. *Barry v. Mercein*, 5 How. 119; *Durosseau v. United States*, 6 Cranch, 314; *United States v. Curry*, 6 How. 113; *Ex parte Vallandigham*, 1 Wall. 251.

From the judgments of the Court of Claims appeals are allowed to this court (sect. 707, Rev. Stat.), but no provision has been made for writs of error. Consequently, we cannot proceed by writ of error to review the decisions of that court.

At common law, the writ of *certiorari* is used for two purposes: 1. As an appellate proceeding for the re-examination of some action of an inferior tribunal; and, 2. As auxiliary process

to enable a court to obtain further information in respect to some matter already before it for adjudication. It is for the last purpose only that the writ is employed in this court.

In the present case the writ is asked, not to bring here any part of the record of the Court of Claims as it existed when the appeal was taken, but to obtain a new record of a new proceeding which has been had since, and by which the judgment appealed from has been vacated and a new trial granted in the court below. The object is to inform us, not of what was done before the appeal, but of what has been done since. Our action under the appeal, however, is confined to what was done before; and, if we act at all upon what has been done since, it must be in consequence of some new jurisdiction to be acquired. From what has already been said, it is clear that, for such a purpose, we have no power to issue the writ.

The Court of Claims, by granting a new trial, has resumed control of the cause and the parties. This it had the right to do. Such a power may be somewhat anomalous, but it is expressly given; and every person, when he submits himself to the jurisdiction of that court for the prosecution of his claim, subjects himself to its operation. The proceedings under which the new trial was obtained are now a part of the record below, and, after judgment is finally rendered, may be brought here by appeal for review.

Motion of the United States to dismiss the appeal granted.

Motion for certiorari denied.

TOWN OF SOUTH OTTAWA v. PERKINS.

SUPERVISORS OF KENDALL COUNTY v. POST.

1. The Supreme Court of Illinois, by a long course of decisions, has held that, under the Constitution of 1848, a statute of that State is not valid unless the legislative journals show that it was passed by a majority of all the members elect in each house of the general assembly.
2. Except where the Federal Constitution and laws are concerned, the courts of the United States, in passing upon the Constitution and statutes of a State, conform to the settled construction of them by the highest State court;